

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **People of MI v Samuel Earel Fluker**
Docket No. **270681**
L.C. No. **06-000584-03**

Michael J. Talbot, Judge, acting under MCR 7.211(E)(2), orders:

The prosecution's confession of error under MCR 7.211(C)(7) is accepted and defendant-appellant's sentence is VACATED, the trial court having erred in imposing prison terms for felonious assault and carrying a concealed weapon without articulating substantial and compelling reasons for the departure from the intermediate sanction recommended under the guidelines, see *People v Stauffer*, 465 Mich 633; 640 NW2d 869 (2002); and the trial court having erred in ordering the sentence for carrying a concealed weapon to be served consecutively to the sentence for felony firearm. See *People v Cortez*, 206 Mich App 204, 207; 520 NW2d 693 (1994). The matter is REMANDED for resentencing.

The pending motion to remand pursuant to MCR 7.211(C)(1) is DISMISSED as moot in light of the foregoing disposition of the appeal.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 10 2007
Date

Sandra Schultz Mengel
Chief Clerk